

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - February 17, 1971

Appeal No. 10669 Lincoln-Westmoreland Housing Corporation,
appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and unanimously carried, with Samuel Scrivener, Jr. absent, the following Order of the Board was entered at the meeting of February 23, 1971.

EFFECTIVE DATE OF ORDER - April 29, 1971

ORDERED:

That the appeal for variance to establish a child day care center for approximately 48 children in C-2-B apartment building at 1730 - 7th Street, NW., Lot 33, Square 419, be partially granted conditionally.

FINDINGS OF FACT:

1. The subject property is located in a C-2-B District.
2. The property is currently being developed as a 108 unit commercial-residential apartment building. The building is located in the Shaw Urban Renewal Area and is part of the redevelopment of the Seventh Street frontage.
3. The National Capitol Area Child Day Care Association proposes to operate a day care center on the ground floor in the north end of the building which is nearing completion.
4. The bulk of the outdoor play space and when added to adjacent space on Lot 33 will provide adequate outdoor space which will be located on a separate and abutting lot (Lot 824, Square 419) which contains 2,375 square feet. This lot will be leased from the Redevelopment Land Agency and will provide adequate outdoor play space for 48 children.
5. The appellant amended his appeal requesting a reduction from the 100 square feet per child requirement of the Zoning Regulations to 80 feet per child.

6. The apartment building will house one, two, and three bedroom units with pre-school age children and the community requested that a day care center be included on the site.

7. Lot 824 when added to the unoccupied part of Lot 33 will furnish a total of 3,939 square feet for play space.

8. There was no opposition to the granting of this appeal registered at the public hearing.

OPINION:

We are of the opinion that the appellant's request for a variance must be denied. The appellant has failed to show, as required by the variance clause of the Zoning Regulations, that the property could not be used as zoned and since this is a new building, any argument that could have been made for a variance would be considered of the owner's making. However, we are also of the opinion that a day care center should be considered a permitted use in the C-2-B District.

We note that in the preamble the C-2-B zone, Sub-section 5102.1, Paragraph 2 requirement that, "it would restrict the first story for retail commercial uses and the construction of medium to high density apartments would be encouraged without sacrificing the primary purpose of the C-2 District which is to provide a large variety of retail, commercial business, and professional services for the surrounding neighborhood," is broadly worded and would permit considerable latitude of interpretation. We also note that Sub-section 5102.31 states that the C-2 District "any use permitted in the C-1 District under Paragraph 5101.3" is permitted as a matter of right. In the accumulative sequence of the Zoning Regulations, this would imply that residential uses are permitted in the building in a C-2 District.

Sub-section 5102.5 and more specifically Paragraph 5102.51 by most precise description of what is permitted on the first floor of C-2-B building "the first story shall be occupied by uses first permitted in a C-1 or C-2 District except for those areas such as lobbies, elevators and stairways necessary to serve the upper stories." Private schools in the form of kindergarten

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OPINION Cont'd:

or pre-school are permitted as a matter of right in the R-4 District, Paragraph 3104.35 and the S-P District, Section 4101.32. Therefore it cannot be said that this form of use is first permitted in a C-1 or C-2 District. On the other hand, the Board does not consider day care center, kindergarten, or pre-school operations to be a normal residential use since in the more restrictive residential areas they may only be established with approval of the Board as conditional uses. Also under these circumstances, the Board must find that the facility will serve the immediate neighborhood.

Going back to the preamble to the C-2-B zone requirement that first floor facilities "provide a large variety of services for the surrounding neighborhood." Subject day care center is a non-residential use and will serve the immediate neighborhood. Therefore, we would interpret the C-2-B first floor use regulations to permit a day care center, pre-school, or kindergarten. Therefore, based on the above analysis, we conclude that the day care center is permitted subject to the following conditions:

[a] The use may continue so long as the day care center maintains a lease for the use of Lot 824, Square 419, as open play space or this space is replaced by play space as an alternate location and approved by the Board.

[b] Enrollment shall be limited to 48 children.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED:

By: _____
PATRICK E. KELLY, Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DIRECTOR OF INSPECTIONS WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.